

INITIAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the California Corporate Commissioner ("Commissioner") sets forth below the reasons for the proposed amendments to Sections 260.230, 260.231, 260.236.1, 260.241.4, and 260.242, and proposed repeal of Sections 260.231.2 and 260.236.2, of Corporate Securities Law of 1968. In general, the proposed regulatory action seeks to conform these rules to law by clarifying that all applications, reports and other documents of investment advisers must be filed electronically through the Investment Adviser Registration Depository ("IARD") in accordance with Section 25231 of the Corporations Code.

The Department of Corporations ("Department") licenses and regulates investment advisers pursuant to the Corporate Securities Law of 1968, as amended ("Corporate Securities Law"). Under the Corporate Securities Law, it is unlawful for an investment adviser to conduct business without first applying for and securing a certificate, as specified.

Operative January 1, 2005, AB 3070 (Chapter 461, Statutes of 2004) requires all investment adviser and investment adviser representative applications and other specified documents to be filed electronically with and transmitted to the web-based IARD, operated by the National Association of Securities Dealers. This rulemaking action makes conforming changes to the rules regarding the filing of applications and amendments.

In 2003, Corporations Code Section 25612.3 was added by AB 1031 (Chapter 473, Statutes of 2003) to require the Commissioner to use certain forms in the licensing of securities professionals. Since the forms are now required by statute, all existing incorporations of versions of these forms are being redacted in this rulemaking action.

Finally, This rulemaking action eliminates the reference to the appeal process under the Permit Reform Act as a result of the repeal of that law in 2003 (AB 1757 (Chapter 229, Statutes of 2003)).

Section 260.230.

Section 260.230 provides that all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the Code may be filed electronically with and transmitted to IARD.

The proposed rule would amend Section 260.230 to clarify that electronic filing with the IARD is mandatory. The proposed rule is necessary to ensure that all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner

pursuant to the Code are filed electronically with and transmitted to IARD. This change is necessary to incorporate the changes made to Corporations Code Section 25231(b), and to ensure that all of the Department's licensees are on IARD, and thus available through this database to the public.

Section 260.231.

Section 260.231 sets forth the filing requirements for any investment adviser choosing to participate in the IARD.

The proposed rule would amend Section 260.231 by striking out the language differentiating between filing and non-filing through the IARD. The proposed rule is necessary to ensure that all investment adviser applications filed with the Commissioner are filed electronically with and transmitted to IARD. It is no longer a necessary to differentiate between filing and non-filing through the IARD. This change is needed to incorporate the changes made to Corporations Code Section 25231(b) by AB 3070.

The proposed rule would further amend the section to eliminate the incorporation of versions of forms required to be used under Corporations Code Section 25612.3, since the incorporation of versions of the forms is no longer necessary after Corporations Code Section 25612.3 was enacted.

In addition, the proposed rule would amend subsection (f) to clarify the procedure for successions to the business of an investment adviser in cases where the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership. The rule would allow the successor to amend the predecessor's Form ADV to reflect the change, rather than require the filing of a Form ADV-W (withdrawal from licensure) and a new Form ADV. The purpose of this amendment is to simplify the workload required when firms make such a change, since all of the remaining information on the registration remains the same, and the firm continues in business. Additionally, it allows the firm to continue to use the same CRD number. This change is further necessary to follow the same procedure for successions for investment advisers as for broker-dealers (see Section 260.211(e)).

Finally, the proposed rule would amend Section 260.231 to eliminate the notice of appeal rights under the Permit Reform Act of 1981 (Government Code Section 15378(b)), since this code section was repealed.

Section 260.231.2.

Section 260.231.2 sets forth the requirements of an application for a certificate as an investment adviser by an applicant not filing through the IARD.

The proposed rule would repeal Section 260.231.2 because a separate instruction for investment advisers not filing through the IARD is no longer needed since filing through IARD is now required for all applicants. The repeal of this section is necessary to incorporate the changes made to Corporations Code Section 25231(b) by AB 3070.

Section 260.236.1.

Section 260.236.1 sets forth the reporting requirements for any investment adviser representatives of investment advisers filing through the IARD.

The proposed rule would amend Section 260.236.1 by striking out the language identifying this section as only applicable to those filing through the IARD, since all applicants must now file through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b).

The proposed rule would further amend the section to eliminate the incorporation of versions of forms required to be used under Corporations Code Section 25612.3, since the incorporation of versions of the forms is no longer necessary after Corporations Code Section 25612.3 was enacted.

Section 260.236.2.

Section 260.236.2 sets forth the reporting requirements for any investment adviser representatives not filing through the IARD.

The proposed rule would repeal Section 260.236.2, since all investment adviser representatives must be reported through IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b).

Section 260.241.4.

Section 260.241.4 sets forth the requirements for broker-dealers and investment advisers to file notices of any changes in the information contained in the applications for a certificate.

The proposed rule would amend Section 260.241.4 by striking out the language differentiating between those filing and those not filing through the IARD. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b) as it is no longer a necessity to differentiate between licensees filing and not filing through the IARD.

Section 260.242.

Section 260.242 sets forth the requirements upon a broker-dealer and investment adviser when filing an application to surrender a certificate. The Section states that investment advisers that do not participate in IARD shall file Form ADV-W directly with the Commissioner.

The proposed amendment to Section 260.242 would clarify that participation in IARD is mandatory. This change is necessary to be consistent with and avoid conflict with Corporations Code Section 25231(b). It is no longer a necessity to differentiate between licensees filing and not filing through the IARD.

ECONOMIC IMPACT GOVERNMENT CODE SECTION 11346.2(b)(4)

The Department has made an initial determination that the proposed regulations will not have a significant adverse economic impact on business, as electronic filing is mandated by statute and not this rulemaking action.

ALTERNATIVES CONSIDERED

The Department is not aware of any reasonable alternatives to this proposed rulemaking action for carrying out the purposes for which this action is proposed. Under Government Code Section 11342.610(b), an investment adviser is not a small business, and therefore no alternatives would lessen the impact of this rulemaking action on small business.

FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscriminatory cost or savings are imposed on local agencies.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.